

San Francisco Web Pressmen and Platemakers' Union No. 4 affiliated with the International Printing and Graphic Communications Union of North America (San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency) and Gil Fowler. Case 20-CB-4721

25 August 1983

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JENKINS AND ZIMMERMAN

On 25 April 1980 the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding.¹ Therein, the Board, reversing the Administrative Law Judge's contrary findings, found that Respondent did not breach its duty of fair representation toward employees Mike Tenorio and Gil Fowler when it processed a grievance concerning their discharge without personally interviewing them concerning the events which led to the discharge. Rather, the Board found that, by separately interviewing two employee eyewitnesses as well as a third employee who was involved in the incident which led to the discharge of Tenorio and Fowler, Respondent had acted within the "wide range of reasonableness" accorded a statutory bargaining representative and had satisfied its duty of fair representation.² Accordingly, the Board concluded that Respondent had not violated Section 8(b)(1)(A) of the Act, and dismissed the complaint in its entirety. Thereafter, Tenorio and Fowler filed a petition for review of the Board's Decision and Order and the entire matter came to be heard before the United States Court of Appeals for the Ninth Circuit.

On 29 June 1982 the court issued its opinion reversing the Board's decision and finding that Respondent had violated the Act, as found by the Administrative Law Judge.³ In the court's view, the "particular circumstances of this case" obligated Respondent to attempt to ascertain Tenorio's and Fowler's versions of the events that led to their discharge. Having found that Respondent violated Section 8(b)(1)(A) of the Act, as alleged in the complaint, the court remanded this proceeding to the Board for further proceedings in accordance with its opinion.

The Board accepted the remand. Pursuant to said remand, the Board invited the parties to file statements of position with respect to the issues

raised. Such statements have been filed by the General Counsel, Tenorio and Fowler, and Respondent.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed further the entire record in this proceeding, including the statements of position, and, having accepted the court's decision as the law of the case, has decided to adopt the recommended remedy of the Administrative Law Judge reported at 249 NLRB 88, 97, and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, San Francisco Web Pressmen and Platemakers' Union No. 4 affiliated with the International Printing and Graphic Communications Union of North America, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Failing or refusing to fairly represent any employee by processing his or her grievance in an arbitrary or perfunctory manner.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Request San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency to reinstate Gil Fowler and Mike Tenorio to their former positions of employment; and, if it refuses, promptly pursue the remaining stages of the grievance procedure, including arbitration, in good faith with due diligence.

(b) Permit Gil Fowler and Mike Tenorio to have their own counsel at the remaining stages of the grievance procedure and at the arbitration proceeding and pay the reasonable legal fees of such counsel.

(c) In the event that it is not possible to pursue the remaining stages of the grievance procedure due to considerations of timeliness, resulting in the inability to resolve the grievance of Gil Fowler and Mike Tenorio on the merits, make Fowler and Tenorio whole for any loss of pay they may have suffered as a result of its unlawful conduct in processing their grievance in an arbitrary or perfunctory manner, in the manner set forth in the Administrative Law Judge's remedy.

¹ 249 NLRB 88 (Member Jenkins concurring).

² *Id.* at 90, citing *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953).

³ *Michael Tenorio & Gil Fowler v. NLRB*, 680 F.2d 598 (Circuit Judge Hug dissenting), petition for rehearing denied 13 October 1982).

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all dispatch hall records, reports, work lists, and other documents necessary to analyze the amount of backpay due under the terms of this Order.⁴

(e) Post at its San Francisco, California, hiring hall copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Forward signed copies of said notice to the Regional Director for Region 20 for posting by San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency, if willing, at locations in San Francisco, California, where notices to employees are customarily posted.

(g) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

⁴ See *Plumbers Local 40 (Mechanical Contractors)*, 242 NLRB 1157 (1979).

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT fail or refuse to fairly represent any employee represented by us and WE WILL not arbitrarily and perfunctorily process any employee's grievance.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL request San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency to reinstate Gil Fowler and Mike Tenorio to their former positions of employment, and, if it refuses to do so, WE WILL promptly pursue the remaining stages of the grievance procedure, including arbitration, in good faith with all due diligence.

WE WILL permit Gil Fowler and Mike Tenorio to be represented by their own counsel at the remaining stages of the grievance procedure and at the arbitration proceeding, and WE WILL pay the reasonable legal fees of such counsel.

WE WILL make Gil Fowler and Mike Tenorio whole, with interest, for any loss of pay they may have suffered as a result of our failure to fairly process their grievance concerning their discharges by San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency, if their grievance concerning those discharges cannot be processed through the grievance procedure to arbitration because it is not timely.

SAN FRANCISCO WEB PRESSMEN AND
PLATEMAKERS' UNION NO. 4 AFFILI-
ATED WITH THE INTERNATIONAL
PRINTING AND GRAPHIC COMMUNI-
CATIONS UNION OF NORTH AMERICA